

REMARKS

Applicant has carefully reviewed the Application in light of the Office Action mailed December 16, 2005. At the time of the Office Action, Claims 1-27 were pending in the Application. Applicant amends Claims 1, 7-10, 16, and 22 and cancels Claims 6, 14, 20, and 26 without prejudice or disclaimer. The amendments and cancellation to these claims are not the result of any prior art reference and, thus, do not narrow the scope of any of the claims. Furthermore, the amendments are not related to patentability issues and only further clarify subject matter already present. All of Applicant's amendments have only been done in order to advance prosecution in this case. Applicant respectfully requests reconsideration of the pending claims and favorable action in this case.

Claim Objections

The Examiner has made an objection to Claim 1: specifically that the lines are crowded too closely together, making reading difficult. Applicant apologizes for this drafting imperfection. Applicant has made a formatting correction in order to address the Examiner's concern and, thereby, to overcome the Examiner's objection.

Section 102 Rejection

The Examiner rejects Claims 1-6, 8, and 10-27 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,505,174 issued to Keiser et al. (hereinafter "Keiser"). Applicant respectfully traverses this rejection for the following reasons.

Applicant respectfully reminds the Examiner that a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.¹ In addition, "[t]he identical invention must be shown in as complete detail as is contained in the . . . claims" and "[t]he elements must be arranged as required by the claim."² In regard to inherency of a reference, "[t]he fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the

¹ *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1987); MPEP §2131.

² *Richardson v. Suzuki Motor Co.*, 9 USPQ 2d 1913, 1920 (Fed. Cir. 1989); *In re Bond*, 15 USPQ 2d 1566 (Fed. Cir. 1990); MPEP §2131 (*emphasis added*).

inherency of that result or characteristic.”³ Thus, in relying upon the theory of inherency, an Examiner must provide a basis in fact and/or technical reasoning to support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.⁴

Using this well-settled jurisprudence, it is clear that *Keiser* fails to anticipate Independent Claim 1. In particular, *Keiser* fails to disclose any architecture in which there is a “content services gateway coupled to the billing system element and operable to communicate with the billing system element in order to *manage distribution of quota provided to the end user, wherein the quota reflects a currency for the end user to apply in accessing the data segment*” as is recited by the pending subject matter.

The Examiner mistakenly relies on *Keiser* for disclosure of this function. In particular, the Examiner has cited cash account balances, which in the architecture of *Keiser* are used to purchase securities in an open market exchange, for the recitation of quota management. More specifically, the Examiner has cited one function of *Keiser* in providing stop-loss orders (which are instructions on when to sell a security based on its fluctuating price), as being relevant to the quota distribution feature of the pending subject matter. Clearly, this teaching is not akin to quota that reflects a currency for the end user to apply in accessing the data segment. For example, there is no recitation in *Keiser* for the cash balances being applied for the privilege of accessing a data segment. Repeatedly, *Keiser* discloses that the balances are only applied to take financial positions in marketable securities. Indeed, *Keiser* is not even tangentially relevant to such quota management operations, nor could it handle such activities. So disparate are the teachings of *Keiser* that there is a good faith argument here that *Keiser* is not even analogous art. Because *Keiser* fails to disclose such a quota management protocol, Independent Claim 1 is patentable over this reference.

³ MPEP §2112 (citing *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ 2d 1955, 1957 (Fed. Cir. 1993) (*emphasis in original*).

⁴ MPEP §2112 (citing *Ex Parte Levy*, 17 USPQ 2d 1461, 1464 (Bd. Pat. and Inter. 1990) (*emphasis in original*).

Section 103 Rejection

The Examiner rejects Claims 7 and 9 under 35 U.S.C. §103(a) as being unpatentable over *Keiser*. Applicant respectfully traverses this rejection for the following reasons.

Applicant respectfully reminds the Examiner that to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation; either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Third, the prior reference (or references when combined) must teach or suggest all of the claim limitations.⁵ It is respectfully submitted that these rejected Claims are patentable over the art of record based on at least the third criterion of obviousness: none of the references alone or in combination teach, suggest, or disclose each and every claim limitation. This prong of §103 has been evaluated extensively in the analysis provided above.

Accordingly, Independent Claim 1 is clearly patentable over the proposed combination for at least these reasons. Additionally, the other Independent Claims recite a similar (but not an identical) limitation and, therefore, are also allowable over the proposed combination. In addition, their corresponding dependent claims are patentable over the proposed combination for analogous reasons. Therefore, all of the pending claims are allowable over the references of record. Notice to this effect is respectfully requested in the form of a full allowance of the pending claims.

⁵ See M.P.E.P. §2142-43.

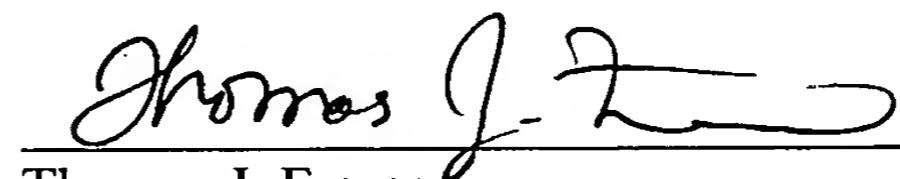
CONCLUSION

Applicant has now made an earnest attempt to place this case in condition for immediate allowance. For the foregoing reasons and for all other reasons clear and apparent, Applicant respectfully requests reconsideration and allowance of the pending claims.

Applicant believes no fee is due. However, if this is not correct, the Commissioner is hereby authorized to charge any additional amount required or credit any overpayment to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

If there are matters that can be discussed by telephone to advance prosecution of this application, Applicant invites the Examiner to contact Thomas J. Frame at 214.953.6675.

Respectfully submitted,
BAKER BOTTS L.L.P.
Attorneys for Applicant



Thomas J. Frame
Reg. No. 47,232

Date: February 7th, 2006

Customer No. **05073**